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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126521-0640-02]

RIN 0648-XA903

Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to the 2012 Bering Sea and Aleutian Islands Pacific Cod Total Allowable Catch Amount

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason adjustment; request for comments.

SUMMARY: NMFS is adjusting the 2012 total allowable catch (TAC) amount for the Bering Sea and Aleutian Islands (BSAI) Pacific cod fishery. This action is necessary because NMFS has determined this TAC is incorrectly specified. This action will ensure the BSAI Pacific cod TAC is the appropriate amount, based on the best available scientific information for Pacific cod in the BSAI. This action is consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], until the effective date of the final 2012 and 2013 harvest specifications for BSAI groundfish, unless otherwise modified or superseded through publication of a notification in the Federal Register.

Comments must be received at the following address no later than 4:30 p.m., A.l.t., [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL

REGISTER].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2011-0299, by any of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal [www.regulations.gov](http://www.regulations.gov). To submit comments via the e-Rulemaking Portal, first click the “submit a comment” icon, then enter NOAA-NMFS-2011-0299 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on that line.
- Mail: Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.
- Fax: Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907-586-7557.
- Hand delivery to the Federal Building: Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal

identifying information (e.g., name, address) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2012 Pacific cod TAC in the BSAI was set at 229,608 metric tons (mt) by the final 2011 and 2012 harvest specification for groundfish in the BSAI (76 FR 11139, March 1, 2011).

In December 2011, the Council recommended a 2012 Pacific cod TAC of 261,000 mt for the BSAI. This amount is more than the 229,608 mt established by the final 2011 and 2012 harvest specification for groundfish in the BSAI (76 FR 11139, March 1, 2011). The TAC recommended by the Council is based on the Stock Assessment and Fishery Evaluation report (SAFE), dated November 2011, which NMFS has determined is the best available scientific information for this fishery.

Regulations at § 679.20(a)(7)(i)(B) apportion the Pacific cod TAC allocated to the Bering Sea directed Pacific cod fisheries seasonally to distribute catch over time because Pacific cod is a principal prey species for Steller sea lions listed as endangered under the Endangered Species

Act. The first seasonal apportionment can be harvested quickly, and must reflect the TAC based on the best available scientific information to provide the opportunity to harvest available TAC in a manner consistent with the established Steller sea lion protection measures.

In accordance with § 679.25(a)(1)(iii) and (a)(2)(i)(B), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that, based on the November 2011 SAFE report for this fishery, the current BSAI Pacific cod TAC is incorrectly specified. Consequently, the Regional Administrator is adjusting the 2012 Pacific cod TAC to 261,000 mt in the BSAI.

Pursuant to § 679.20(a)(7), Table 5b of the final 2011 and 2012 harvest specifications for groundfish in the BSAI (75 FR 11778, March 12, 2010) is revised for the 2012 Pacific cod TAC consistent with this adjustment.

TABLE 5b—FINAL 2012 GEAR SHARES AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC

[Amounts are in metric tons]

Gear sector	Percent	Share of gear sector total	Share of sector total	Seasonal apportionment	
				Dates	Amount
Total TAC	100	261,000	n/a	n/a	n/a
CDQ	10.7	27,927	n/a	see §679.20(a)(7)(i)(B)	n/a
Total hook-and-line/pot gear	60.8	141,708	n/a	n/a	n/a
Hook-and-line/pot ICA <sup>1</sup>	n/a	500	n/a	see §679.20(a)(7)(ii)(B)	n/a
Hook-and-line/pot sub-total	n/a	141,208	n/a	n/a	n/a
Hook-and-line catcher/processor	48.7	n/a	113,106	Jan 1-Jun 10	57,684
				Jun 10-Dec 31	55,422
Hook-and-line catcher vessel ≥ 60 ft LOA	0.2	n/a	465	Jan 1-Jun 10	237
				Jun 10-Dec 31	228
Pot catcher/processor	1.5	n/a	3,484	Jan 1-Jun 10	1,777
				Sept 1-Dec 31	1,707
Pot catcher vessel ≥ 60 ft LOA	8.4	n/a	19,509	Jan 1-Jun 10	9,950
				Sept 1-Dec 31	9,559
Catcher vessel < 60 ft LOA using hook-and-line or pot gear	2	n/a	4,645	n/a	n/a
Trawl catcher vessel	22.1	51,509	n/a	Jan 20-Apr 1	38,117
				Apr 1-Jun 10	5,666
				Jun 10-Nov 1	7,726
AFA trawl catcher/processor	2.3	5,361	n/a	Jan 20-Apr 1	4,021
				Apr 1- Jun 10	1,340
				Jun 10-Nov 1	0
Amendment 80	13.4	31,232	n/a	Jan 20-Apr 1	23,424
				Apr 1- Jun 10	7,808
				Jun 10-Nov 1	0
Alaska Groundfish Cooperative	n/a	n/a	5,816	Jan 20-Apr 1	4,362
				Apr 1- Jun 10	1,454
				Jun 10-Nov 1	0
Alaska Seafood Cooperative	n/a	n/a	25,416	Jan 20-Apr 1	19,062
				Apr 1- Jun 10	6,354
				Jun 10-Nov 1	0
Jig	1.4	3,263	n/a	Jan 1-Apr 30	1,958
				Apr 30-Aug 31	653
				Aug 31-Dec 31	653

<sup>1</sup> The ICA for the hook-and-line and pot sectors will be deducted from the aggregate portion of Pacific cod TAC allocated to the hook-and-line and pot sectors. The Regional Administrator approves an ICA of 500 mt based on anticipated incidental catch in these fisheries.

**Note:** Seasonal or sector apportionments may not total precisely due to rounding.

## Classification

This action responds to the best available information recently obtained from the fishery.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the

requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and § 679.25(c)(1)(ii) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would require harvests lower than the appropriate allocations for Pacific cod, based on the best scientific information available. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 13, 2011, and additional time for prior public comment would result in conservation concerns for the ESA-listed Steller sea lions.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

This action is required by § 679.22 and § 679.25 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 et seq.

Dated: December 22, 2011

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Alan D. Risenhoover,  
Director, Office of Sustainable Fisheries,  
National Marine Fisheries Service.

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